HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.16075 OF 1987

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Between:

G. Yadagiri Reddy and another

…Petitioners

A n d

Government of Andhra Pradesh
Rep. by its Secretary,
Municipal Administration & Urban
Development, Hyderabad and others.

…Respondents

:: **O R D E R** ::

Counsel for petitioners: Shri V. Venkata Ramana

Counsel for respondent No.1: Government Pleader for Municipal Adminsitration and Urban Development

Counsel for respondent Nos.2 & 3: Smt.G. Jyothi Kiran

Counsel for respondent No.4: Government Pleader for Revenue

Counsel for respondent No.5: Shri C.V. Bhaskar Reddy

August 28, 2006

Per G.S. Singhvi, CJ

In this petition, the petitioners have questioned the legality of notification dated 11-09-1987 issued by Commissioner, Municipal Corporation, Hyderabad (hereinafter described as 'the Commissioner') in exercise of the delegated powers conferred upon him under Section 3 (2) of the Andhra Pradesh Slum Improvement (Acquisition of Lands) Act, 1956 (for short, the 1956 Act') whereby he decided to acquire the area specified in the schedule, which was declared as slum area under Section 3 (1) of the 1956 Act.

The schedule appended to the notification issued by the Commissioner reads as under:

"SCHEDULE

Name of the Area:- Gangidi Yellareddy Compound, Ward-6, Block-6, Secunderabad Division M.C.H.

Estimated No. of Families – 137

Estimated area under actual occupation and No.0-60 Acres, Sy.No.215 off Bakaram village.

Boundaries:

East:- Grave Yard and Housing Complex 6-6-264

West:- Shiva Temple and Neelam Balaiah Complex 6-6-221.

North:- Grave Yard

South:- H.No.6-6-179."

Petitioners claim to be owners of houses bearing Nos.6-6-252 to 254 and 6-6-229 (old No.129/7) respectively situated at Zeera, Secunderabad. This area is said to be popularly known as

Gangidi Yellareddy Compound. They are said to be paying municipal taxes and have leased out the properties to 24 tenants. In 1983, a proposal was mooted for declaring Gangidi Yellareddy Compound as slum area under the 1956 Act. On coming to know of this development, the petitioners made representations dated 26-9-1983 and 27-2-1984. The Collector referred their representations to District Social Welfare Officer, who submitted report dated 11-6-1984 with the recommend-dation that the area should be dropped from the proposed declaration of slum area because it was a private property. On 20-11-1984, 9-1-1985 and 10-1-1985, the petitioners submitted further representations along with copy of report dated 11-6-1984 prepared by the District Social Welfare Officer and pleaded that their properties may not be declared as slum under the 1956 Act. After sometime, they filed Writ Petition No.13973 of 1986 questioning the proposed inclusion of their properties in the notification to be issued under Section 3 (1) of the 1956 Act. By an order dated 30-1-1987, this Court dismissed the writ petition as premature. After about 25 days, the Commissioner issued notification dated 25-2-1987 under Section 3 (1) of the 1956 Act declaring the area of Gangidi Yellareddy Compound as the slum. The petitioners challenged that notification in Writ Petition No.3981 of 1987, which was dismissed on 24-7-1987 with the observation that the petitioners can agitate their grievance after issue of notification under Section 3(2) of the 1956 Act. Thereafter, the Commissioner issued notice to the petitioners proposing to acquire the land. The petitioners filed written representation and opposed the issue of notification under Section 3 (2) by asserting that all

amenities were available in the area including drainage and that municipal numbers had been assigned to the houses and taxes were being paid. After hearing the petitioners, the Commissioner passed order dated
10-9-1987 whereby he rejected the objections. On the next day i.e., 11-9-1987, notification under Section 3 (2) was issued.

The petitioners have challenged the impugned notification on several grounds set out in the affidavit of petitioner No.1 - G. Yadagiri Reddy including the one that they were not given effective opportunity of hearing and the objections raised by them were not considered by the Commissioner in a correct perspective. The petitioners have also questioned the very applicability of the 1956 Act to the land in question.

On the last date of hearing i.e., 21-8-2006, Sri V. Venkata Ramana, learned counsel for the petitioners made some arguments and then sought adjournment to enable his clients to produce documents showing their title over the land in dispute. His request was accepted and the case was adjourned for today. Simultaneously, a direction was given to Commissioner, Municipal Corporation, Hyderabad to appear in person along with the records and assist the Court because no one had appeared on behalf of the Municipal Corporation.

In compliance of the aforementioned direction, Shri Sanjay Jaju, Commissioner, Municipal Corporation, Hyderabad has appeared and assured that in future adequate arrangements will be made for proper representation of the Municipal Corporation before the Court.

Shri V. Venkata Ramana, learned counsel for the

petitioners argued that the impugned notification is liable to be quashed because the properties belonging to his clients are fully developed. He submitted that the predecessor of his clients had purchased the land from Shri Anam Rathaiah and, thereafter, the same has been transferred on more than one occasion. Learned counsel emphasized that the area forming part of the properties of the petitioners is fully developed and they have been paying municipal taxes. He then pointed out that members of respondent No.5 – Association are tenants of the petitioners against whom eviction petitions have been filed by his clients.

Learned counsel representing Municipal Corporation, Hyderabad referred to some letters sent to her by Mandal Revenue Officer showing that the land comprised in Survey No.215 of Village Bakaram is a government land, but despite our repeated insistence, she could not produce before the Court the relevant records in which the land in question is shown to be the government land. Learned Government Pleader appearing for Municipal Administration also could not draw our attention to any documentary evidence to show that the land in dispute is the government land.

Learned counsel for respondent No.5 lamented that the applications made by his client to Mandal Revenue Officer for supply of copies of public documents showing that the land in question forms part of government land was rejected by the officer and, on that account, he is not in a position to demonstrate that the land in question is a government land.

In our opinion, the attitude of the non-cooperation exhibited by the authorities of the Municipal Administrative Department of

the Government of Andhra Pradesh and Municipal Corporation, Hyderabad is totally unwarranted because on account of non-production of the record in which the lands in question is shown as government land, the Court has been deprived of an opportunity to effectively adjudicate the issue raised by the petitioner. A reading of order dated 10-9-1987 passed by the Commissioner shows that he rejected the objections raised by the petitioners mainly on the ground that the land in question is a government land. The correctness of the finding recorded by the Commissioner on this issue could be examined only after perusing the relevant records, which, as mentioned above, has not been produced before the Court. Therefore, we are left with no choice but to remit the case to Commissioner, Municipal Corporation, Hyderabad for fresh adjudication of the objections filed by the petitioners in response to notice dated 09-07-1987. Consequently, the writ petition is disposed of with the following directions:

1) For a period of eight weeks from today, notification dated 11-09-1987 shall remain in abeyance.
2) Within two weeks from today, the petitioners or their representatives and the representative of added respondent as also Mandal Revenue Officer shall produce documentary evidence before Commissioner, Municipal Corporation, Hyderabad in support of their respective stands.
3) Within next two weeks, the parties be given opportunity to inspect the records produced by the other side.
4) At the end of four weeks period, Commissioner, Municipal Corporation shall fix the date on which the parties or their representative may appear for personal hearing.

5) After hearing the representatives of the parties and examining the entire record, Commissioner, Municipal Corporation shall pass fresh reasoned order on the objections filed by the petitioners in response to notice dated 09-07-1987.

6) If the Commissioner comes to the conclusion that the land in question is government land, the notification dated 11-09-1987 shall automatically stand revived and the competent authority shall be entitled to take further action in terms of the provisions of the 1956 Act. If, on the other hand, the Commissioner comes to the conclusion that the land in question is not the government land, then he shall pass appropriate order.

7) In the event of a finding being recorded by the Commissioner that the land in question is the government land, the writ petitioners shall be entitled to avail appropriate legal remedy against the order of Commissioner including the one by filing fresh petitions. In that event, they may also revive their challenge to notification dated 11-09-1987.

While disposing of the writ petition in the manner indicated above, we make it clear that if the Commissioner feels necessary, then he may summon records from the concerned authorities of the government and make available the same for inspection by both the parties.

It is also made clear that orders passed in the previous litigation shall not in any manner prejudicially affect the rights of either of the parties.

At this stage, learned counsel for respondent No.5 made a statement that his clients are in possession of the land in question for a period of more than 50 years and, therefore, their possession may be protected during the pendency of reconsideration of the matter by the Commissioner. This request of the learned counsel is accepted and it is directed that for a period of ten weeks from today, members of respondent No.5 shall not be evicted in execution of the orders, if any, passed by the Civil Courts and Rent Controllers.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

August 28, 2006
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